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OFFICE OF PETITIONS

In re Patent No. 7,741,080 :
Issued: June 22, 2010 : DECISION ON REQUEST
Application No. 10/594,969 : FOR RECONSIDERATION
Filed: March 14, 2007 : OF PATENT TERM ADJUSTMENT
Attorney Docket No. 68600.000002

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)", filed August 13, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eighty five(285) days to four hundred sixty-one (461) days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petition to correct the patent term adjustment indicated on the above-identified patent is DISMISSED.

Applicant disputes the period of adjustment for Office failure to mail a first action under 35 U.S.C. 132. Applicant asserts that the period should be calculated as 319 days. Applicant also disputes the failure to issue a patent within three years of the actual filing date of the above-identified patent in accordance with 37 C.F.R. § 1.702(b) and argues that the period should be 269 days.

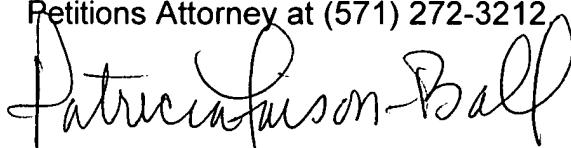
Applicant's arguments have been considered, but not found to be persuasive.

The period of examination delay, "A" delay, pursuant to 37 CFR 1.702(a)(1) is 149 days calculated from March 14, 2007, the 371 completion date. The delay pursuant to 37 CFR 1.702(b) is 263 days based on a national stage commencement date under 35 U.S.C. 371(f) of October 2, 2009, not September 26, 2009, three years from the filing day of the application. As such, the patent term adjustment of two hundred eighty-five (285) days (149 "A delay days" plus 263 "B delay days" minus 127 "Applicant delay days"), as indicated in the patent, is properly reflected.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e) .

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212



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